

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

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November 18, 2010

Legend:

Distributing I =

Distributing II =

Controlled I =

Controlled II =

Business 3 Subsidiaries =

Shareholder =

State A =

State B =

aa =

Business 1 =

Business 2 =

Business 3 =

Date A =

Date B =

Dear :

This letter is in response to your April 30, 2010 request for rulings regarding certain federal income tax consequences of a proposed transaction. The information submitted in that request and in subsequent correspondence is summarized below.

The rulings contained in this letter are based on facts and representations submitted by the taxpayer and accompanied by a penalties of perjury statement executed by an appropriate party. This office has not verified any of the materials submitted in support of the request for rulings. Verification of the information, representations, and other data may be required as part of the audit process.

Moreover, no information provided by the taxpayer has been reviewed and no determination has been made regarding whether either Distribution 1 or Distribution 2 (each described below): (i) satisfies the business purpose requirement of § 1.355-2(b) of the Treasury Regulations; (ii) is used principally as a device for the distribution of the earnings and profits of the distributing corporation or a controlled corporation or both

(see § 355(a)(1)(B) of the Internal Revenue Code and § 1.355-2(d)); or (iii) is part of a plan (or series of related transactions) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50-percent or greater interest in the distributing corporation or a controlled corporation (see § 355(e)(2)(A)(ii) and § 1.355-7).

Facts

Distributing II, a State A corporation, is the common parent of an affiliated group of corporations that files a consolidated federal income tax return (the “D II Group”). Distributing II, which serves as a holding company for the trades and businesses of the D II Group, is engaged in Business 1 through its separate affiliated group (“SAG”) (as defined in § 355(b)(3)(B)). Distributing II is wholly owned by Shareholder.

Distributing I, a State A corporation, has three classes of common stock issued and outstanding. Distributing II owns all shares of Distributing I voting common stock, which represents aa% of the value of Distributing I stock; the remaining two classes of non-voting common stock are held by other shareholders unrelated to Distributing II. Certain Distributing I shareholders are participants in the company’s Restricted Stock Ownership Plan. Distributing I is primarily and directly engaged in Business 1.

Controlled I (a State A corporation) and Controlled II (a State B corporation) each have outstanding one class of voting common stock and one class of non-voting common stock. Distributing I owns all shares of Controlled I and Controlled II stock. Controlled I is directly engaged in Business 2; Controlled II is engaged in Business 3 through the Business 3 Subsidiaries, which are members of its SAG.

Distributing I, Controlled I, Controlled II, and the Business 3 Subsidiaries are members of the D II Group.

The financial information submitted by or on behalf of Distributing I, Distributing II, Controlled I, Controlled II, and the Business 3 Subsidiaries indicates that each of Business 1, Business 2, and Business 3 has had gross receipts and operating expenses representing the active conduct of a trade or business for each of the last five years.

Effective Date A, Distributing I contributed all of the assets and liabilities associated with Business 2 to Controlled I in exchange for all Controlled I stock. Effective Date B, Distributing I contributed all stock of the Business 3 Subsidiaries to Controlled II in exchange for all Controlled II stock (such contributions collectively, the “Contribution”).

Prior to Distribution 1 (as described below), each of Controlled I and Controlled II will undertake a recapitalization (the “Recapitalization”) whereby (i) its outstanding non-voting stock will be exchanged for stock that constitutes voting stock for purposes of

§ 368(c), and (ii) the total number of common shares will be increased to equal the number of common shares currently outstanding in Distributing I.

Proposed Transaction

In order to protect Business 1 from the risks and liabilities of Businesses 2 and 3, among other business purposes, Distributing I, Distributing II, Controlled I, and Controlled II will undertake the following steps (the "Proposed Transaction"):

- (i) After the Recapitalization, Distributing I will distribute all Controlled I and Controlled II stock to its shareholders on a pro rata basis ("Distribution 1"). No other property will be distributed in Distribution 1.
- (ii) Thereafter, Distributing II will distribute all of its stock in Controlled I and Controlled II to Shareholder ("Distribution 2"). No other property will be distributed in Distribution 2.

Representations

The following representations have been made in connection with the Contribution and Distribution 1:

- (a) No part of the consideration to be distributed by Distributing I will be received by a shareholder as a creditor, employee, or in any capacity other than that of a shareholder of Distributing I.
- (b) Controlled II will treat all members of its SAG (as defined in § 355(b)(3)(B)) as one corporation in determining whether it meets the requirements of § 355(b)(2)(A) regarding the active conduct of a trade or business.
- (c) The five years of financial information submitted with regard to Business 1, Business 2, and Business 3 are representative of each business's present operations and, with regard to each business, there have been no substantial operational changes since the date of the last financial statements submitted. The Business 3 Subsidiaries are and, immediately after Distribution 1, will be affiliated with Controlled II in a manner that satisfies § 1504(a) without regard to § 1504(b).
- (d) Following Distribution 1, each of Distributing I, Controlled I, and (through its SAG) Controlled II will continue the active conduct of its business, independently and with its separate employees, except that certain officers of Distributing I will continue to serve as officers of Controlled I and/or Controlled II following Distribution 1. These shared officers will be paid the fair market value of their services by each respective corporation.

- (e) Neither Business 1 nor Business 2 nor Business 3 nor control of an entity conducting any of these businesses will have been acquired during the five-year period ending on the date of Distribution 1 in a transaction in which gain or loss was recognized (or treated as recognized) in whole or in part.
- (f) Distribution 1 will be carried out for the following corporate business purposes: (i) to protect the assets of Distributing I from the risks and liabilities of Business 2 and Business 3; (ii) to permit the expansion and branding of Controlled I and Controlled II; and (iii) to separate businesses that no longer fit the long-term business strategy of Distributing I. Distribution 1 is motivated, in whole or substantial part, by one or more of these corporate business purposes.
- (g) Distribution 1 will not be used principally as a device for the distribution of the earnings and profits of Distributing I, Controlled I, and/or Controlled II.
- (h) The total adjusted basis and the fair market value of the assets transferred to Controlled I and Controlled II by Distributing I each equals or exceeds the sum of the liabilities assumed (within the meaning of § 357(d)) by Controlled I and Controlled II, respectively, plus any liabilities to which the transferred assets were subject.
- (i) The liabilities assumed (within the meaning of § 357(d)) in the Contribution and the liabilities to which the transferred assets were subject were incurred in the ordinary course of business and were associated with the assets being transferred.
- (j) The fair market value of the assets of Controlled I and Controlled II exceeded the amount of its respective liabilities immediately after the Contribution.
- (k) The aggregate fair market value of the assets transferred to Controlled I and Controlled II, respectively, in the Contribution equaled or exceeded the aggregate adjusted basis of these assets.
- (l) Distributing I neither accumulated its receivables nor made extraordinary payment of its payables in anticipation of Distribution 1.
- (m) No intercorporate debt will exist between Distributing I, on the one hand, and Controlled I or Controlled II, on the other hand, at the time of, or subsequent to, Distribution 1.
- (n) Immediately before Distribution 1, items of income, gain, loss, deduction, and credit will be taken into account as required by the applicable intercompany transaction regulations (see §§ 1.1502-13 and -14 as in effect before the

- publication of T.D. 8597, 1995-2 C.B. 147, and as currently in effect; § 1.1502-13 as published by T.D. 8597). At the time of Distribution 1, Distributing I will not have an excess loss account in the stock of Controlled I or Controlled II or in the stock of any direct or indirect subsidiary of Controlled I or Controlled II.
- (o) For purposes of § 355(d), immediately after Distribution 1, no person (determined after applying § 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Distributing I stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Distributing I stock, that was acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of Distribution 1.
 - (p) For purposes of § 355(d), immediately after Distribution 1, no person (determined after applying § 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of either Controlled I stock entitled to vote or Controlled II stock entitled to vote, or 50 percent or more of the total value of shares of all classes of either Controlled I stock or Controlled II stock, that was either (i) acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of Distribution 1 or (ii) attributable to distributions on Distributing I stock or securities that were acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of Distribution 1.
 - (q) Payments made in connection with continuing transactions, if any, between Distributing I and Controlled I or Controlled II will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.
 - (r) None of the parties to the Proposed Transaction are investment companies as defined in § 368(a)(2)(F)(iii) and (iv).
 - (s) Distribution 1 is not part of a plan or series of related transactions (within the meaning of § 1.355-7) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50-percent or greater interest (within the meaning of § 355(d)(4)) in Distributing I, Controlled I, or Controlled II (including any predecessor or successor of any such corporation).
 - (t) Immediately after the transaction (as defined in § 355(g)(4)), none of Distributing I, Controlled I, or Controlled II will be a disqualified investment corporation (within the meaning of § 355(g)(2)).
 - (u) All classes of stock of both Controlled I and Controlled II will constitute voting stock for purposes of § 368(c) immediately after the Recapitalization.

- (v) The participants of the Restricted Stock Ownership Plan have no rights or option to acquire Controlled I and/or Controlled II shares other than the shares they will receive on a pro rata basis as Distributing I shareholders.

The following representations have been made in connection with Distribution 2:

- (w) No part of the consideration to be distributed by Distributing II will be received by Shareholder as a creditor, employee, or in any capacity other than that of a shareholder of Distributing II.
- (x) Distributing II will treat all members of its SAG (as defined in § 355(b)(3)(B)) as one corporation in determining whether it meets the requirements of § 355(b)(2)(A) regarding the active conduct of a trade or business.
- (y) The five years of financial information submitted with regard to Business 1, Business 2, and Business 3 are representative of each business's present operations and, with regard to each business, there have been no substantial operational changes since the date of the last financial statements submitted. Distributing I is and, immediately after Distribution 2, will be affiliated with Distributing II in a manner that satisfies § 1504(a) without regard to § 1504(b).
- (z) Following Distribution 2, each of Distributing II (through its SAG), Controlled I, and Controlled II (through its SAG) will continue the active conduct of its business, independently and with its separate employees, except that certain officers of Distributing II will continue to serve as officers of Controlled I and/or Controlled II following Distribution 2. These shared officers will be paid the fair market value of their services by each respective corporation.
- (aa) Neither Business 1 nor Business 2 nor Business 3 nor control of an entity conducting any of these businesses will have been acquired during the five-year period ending on the date of Distribution 2 in a transaction in which gain or loss was recognized (or treated as recognized) in whole or in part.
- (bb) Distribution 2 will be carried out for the following corporate business purposes: (i) to protect the assets of Distributing II from the risks and liabilities of Business 2 and Business 3; (ii) to permit the expansion and branding of Controlled I and Controlled II; and (iii) to separate businesses that no longer fit the long-term business strategy of Distributing II. Distribution 2 is motivated, in whole or substantial part, by one or more of these corporate business purposes.
- (cc) Distribution 2 will not be used principally as a device for the distribution of the earnings and profits of Distributing II, Controlled I, and/or Controlled II.

- (dd) No intercorporate debt will exist between Distributing II, on the one hand, and Controlled I and Controlled II, on the other hand, at the time of, or subsequent to, Distribution 2.
- (ee) Immediately before Distribution 2, items of income, gain, loss, deduction, and credit will be taken into account as required by the applicable intercompany transaction regulations (see §§ 1.1502-13 and -14 as in effect before the publication of T.D. 8597, 1995-2 C.B. 147, and as currently in effect; § 1.1502-13 as published by T.D. 8597). At the time of Distribution 2, Distributing II will not have an excess loss account in the stock of Controlled I or Controlled II or in the stock of any direct or indirect subsidiary of Controlled I or Controlled II. Further, any excess loss account of a D II Group member in the stock of another member that is required to be taken into account by § 1.1502-19 will be included in income immediately before Distribution 2.
- (ff) For purposes of § 355(d), immediately after Distribution 2, no person (determined after applying § 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Distributing II stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Distributing II stock, that was acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of Distribution 2.
- (gg) For purposes of § 355(d), immediately after Distribution 2, no person (determined after applying § 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of either Controlled I stock entitled to vote or Controlled II stock entitled to vote, or 50 percent or more of the total value of shares of all classes of either Controlled I stock or Controlled II stock, that was either (i) acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of Distribution 2 or (ii) attributable to distributions on Distributing II stock or securities that were acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of Distribution 2.
- (hh) Payments made in connection with continuing transactions, if any, between Distributing II and Controlled I or Controlled II will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.
- (ii) None of the parties to the Proposed Transaction are investment companies as defined in § 368(a)(2)(F)(iii) and (iv).
- (jj) Distribution 2 is not part of a plan or series of related transactions (within the meaning of § 1.355-7) pursuant to which one or more persons will acquire

directly or indirectly stock representing a 50-percent or greater interest (within the meaning of § 355(d)(4)) in Distributing II, Controlled I, or Controlled II (including any predecessor or successor of any such corporation).

- (kk) Immediately after the transaction (as defined in § 355(g)(4)), none of Distributing II, Controlled I, or Controlled II will be a disqualified investment corporation (within the meaning of § 355(g)(2)).

Rulings

Based solely on the information submitted and the representations made, we rule as follows on the Contribution and Distribution 1:

- (1) The Contribution followed by Distribution 1 will be a reorganization within the meaning of § 368(a)(1)(D). Distributing I, Controlled I, and Controlled II each will be “a party to a reorganization” within the meaning of section 368(b).
- (2) Distributing I recognized no gain or loss on the Contribution (§§ 361(a) and 357(a)).
- (3) Distributing I will recognize no gain or loss on Distribution 1 (§ 361(c)(1)).
- (4) Neither Controlled I nor Controlled II recognized gain or loss on the Contribution (§ 1032(a)).
- (5) The basis of each asset received by Controlled I and Controlled II from Distributing I in the Contribution will be determined in accordance with §§ 362(b) and 362(e).
- (6) The holding period for each asset received by Controlled I and Controlled II from Distributing I in the Contribution includes the period during which such asset was held by Distributing I (§ 1223(2)).
- (7) The shareholders of Distributing I will recognize no gain or loss (and no amount will be included in their income) on Distribution 1 (§ 355(a)(1)).
- (8) The aggregate basis of the stock of Distributing I, Controlled I, and Controlled II in the hands of the Distributing I shareholders immediately after Distribution 1 will equal the Distributing I shareholders’ aggregate basis in the stock of Distributing I immediately before Distribution 1. This aggregate basis will be allocated among the stock of Distributing I, Controlled I, and Controlled II in proportion to the fair market value of each in accordance with § 1.358-2(a)(2) (§§ 358(a)(1), (b), and (c)).

- (9) The holding period of the Controlled I and Controlled II stock received by the Distributing I shareholders in Distribution 1 will include the holding period of the Distributing I stock with respect to which it is received, provided that the Distributing I stock is held as a capital asset on the date of Distribution 1 (§ 1223(1)).
- (10) Earnings and profits will be allocated among Distributing I, Controlled I, and Controlled II in accordance with § 312(h), § 1.312-10(a), and § 1.1502-33(f)(2). Based solely on the information submitted and the representations made, we rule as follows on Distribution 2:
- (11) Distributing II will recognize no gain or loss on Distribution 2 (§ 355(c)(1)).
- (12) Shareholder will recognize no gain or loss (and no amount will be included in its income) on Distribution 2 (§ 355(a)(1)).
- (13) The aggregate basis of the stock of Distributing II, Controlled I, and Controlled II in the hands of Shareholder immediately after Distribution 2 will equal Shareholder's aggregate basis in the stock of Distributing II immediately before Distribution 2. This aggregate basis will be allocated among the stock of Distributing II, Controlled I, and Controlled II in proportion to the fair market value of each in accordance with § 1.358-2(a)(2) (§§ 358(a)(1), (b), and (c)).
- (14) The holding period of the Controlled I and Controlled II stock received by Shareholder in Distribution 2 will include the holding period of the Distributing II stock with respect to which it is received, provided that the Distributing II stock is held as a capital asset on the date of Distribution 2 (§ 1223(1)).
- (15) Earnings and profits will be allocated among Distributing II, Controlled I, and Controlled II in accordance with § 312(h), § 1.312-10(b), and § 1.1502-33(e).

Caveats

Except as expressly provided herein, no opinion is expressed about the tax treatment of the Proposed Transaction under other provisions of the Code or regulations, or about the tax treatment of any conditions existing at the time of, or effects resulting from, the Proposed Transaction not specifically covered by the above rulings. In particular, no opinion is expressed regarding whether Distribution 1 and Distribution 2: (i) satisfy the business purpose requirement of § 1.355-2(b); (ii) are used principally as a device for the distribution of the earnings and profits of Distributing I, Distributing II, Controlled I, or Controlled II; or (iii) are part of a plan (or series of related transactions) under § 355(e)(2)(A)(ii). In addition, no opinion is expressed about the tax treatment of the Recapitalization.

Procedural Statements

This ruling is directed only to the taxpayers who requested it. Section 6110(k)(3) of the Code provides that this private letter ruling may not be used or cited as precedent.

A copy of this letter must be attached to the federal income tax returns to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching to the return a statement that provides the date and control number of this ruling letter.

Pursuant to the power of attorney on file in this matter, a copy of this letter is being sent to your authorized representative.

Sincerely,

Lisa A. Fuller
Senior Counsel, Branch 1
Office of Associate Chief Counsel (Corporate)

cc: